

ECS File: JPA-88-43

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT S-316-508

WINKELMAN - SUPERIOR HIGHWAY (S.R. 177)
(Tilbury Drive - Upton Drive)
Town of Kearny

THIS AGREEMENT, made this 14th day of June, 1988, pursuant to A.R.S. Sec. 11-951 through Sec. 11-954, by and between the Department of Transportation, Highways Division, an agency of the State of Arizona, thereunto duly authorized, hereinafter designated Department of Transportation and the Town of Kearny, a municipal corporation, acting by and through its Town Council, thereunto duly authorized, hereinafter designated as Town.

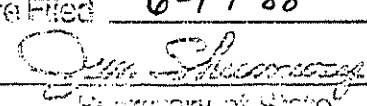
WITNESSETH:

WHEREAS, the Town is empowered by A.R.S. Sec. 9-672B to enter into this agreement and acting by and through its Town Council, has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute same on behalf of the Town; and

WHEREAS, it is to the mutual advantage of the Department of Transportation and the Town to landscape certain areas within the right-of-way on State Route 177 on the west of the roadway from centerline roadway station 1195+40, to centerline roadway station 1209+20, a net distance of approximately .26 miles.

NOW THEREFORE, it is hereby mutually agreed by and between the Department of Transportation and the Town, pursuant to the authority contained in A.R.S. Sec. 28-108 as follows:

1. The Department of Transportation will prepare plans for the landscaping and irrigation project and submit them to the Town for approval.

NO. <u>12958</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>6-17-88</u>
 Secretary of State
<u>APR 1988</u>

2. After Town approval of the plans, the project will be constructed by the Department of Transportation, using State funds. Upon completion of the work the Town shall reimburse the Department of Transportation 25% of the final construction costs.

3. The Town shall furnish and install necessary water services from water mains to the designated locations within the right-of-way on State Route 177 for the landscaping on the west of the roadway from centerline roadway station 1195+40, to centerline roadway station 1209+20. Cost shall be a portion of the 25% matching funds and at standard water service rates, all at Town expense.

4. The Town shall furnish all water for landscape installation during the construction phase, and all water hereafter necessary to properly maintain the landscape within the planters and right-of-way on State Route 177 for the landscaping on the west of the roadway, all as shown on the project plans from centerline roadway station 1195+40, to centerline roadway station 1209+20, all at Town expense.

5. After construction the Town shall maintain the landscaping and irrigation system within the planters and right-of-way on State Route 177 on the west of the roadway from centerline roadway station 1195+40, to centerline roadway station 1209+20.

6. The Town shall furnish all electrical power necessary to maintain the landscaping within the planters and right-of-way on State Route 177 on the west of the roadway from centerline roadway station 1195+40, to centerline roadway station 1209+20.

7. The Town hereby agrees to maintain the landscaping and irrigation system, in an attractive manner, as it was designed and approved by the Department of Transportation, and the Town will not make any changes, additions or deletions without written approval by the Department of Transportation, Roadside Development Services. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic.

8. The parties hereto further agree that to the extent permitted by law, the Department of Transportation and Town agree to defend, indemnify, and hold harmless each other and their agents, officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss or damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of the Department of Transportation or the Town, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgment on the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. Sec. 12-1518 (B) and (C).

9. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

10. Attached hereto are resolutions of the Department of Transportation and the Town authorizing both entities to enter into this agreement, and a written determination by the Town Attorney of Kearny that this agreement is in proper form and within the powers and authority granted to the Town under the laws of this State.

11. The effective date of this agreement shall be upon filing with the Secretary of State and shall remain in full force and effect for a period of five (5) years from the effective date unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless the parties hereto mutually agree by formal amendment reflected herein to this agreement not less than one (1) month prior to the initial or renewed expiration date.


12. All parties are hereby put on notice that this Contract (Agreement) is subject to cancellation by the Governor, pursuant to A.R.S. Sec. 38-511.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.


ARIZONA DEPARTMENT OF TRANSPORTATION

TOWN OF KEARNY, a
municipal corporation

By

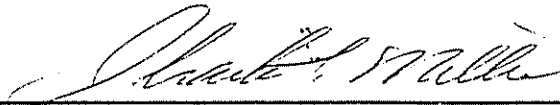

CHIEF DEPUTY STATE ENGINEER

By


Town Manager

RESOLUTION

Be it resolved on this date, June 14, 1988,
I, CHARLES L. MILLER, the below undersigned Director,
Department of Transportation, have determined that it is to be
to the advantage of the State of Arizona that the Department of
Transportation, acting by and through the Highways Division,
and the TOWN OF KEARNY, acting by and through its TOWN COUNCIL
enter into the intergovernmental agency agreement for the
purpose of entering in a landscape maintenance agreement for
certain projects which have been selected by the State and
subject to the approval of the Town of Kearny as by law
required; and request the Town to perform certain work and
supply necessary materials required to maintain the specified
areas in the manner specified in the attached agreement.



CHARLES L. MILLER, Director
Department of Transportation

RESOLUTION 88-233

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF KEARNY, ARIZONA, APPROVING THE "LANDSCAPE MAINTENANCE AGREEMENT" BETWEEN THE TOWN AND THE ARIZONA DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION; AND AUTHORIZING PATRICIA J. SHARRAH, MAYOR, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EMERGENCY.

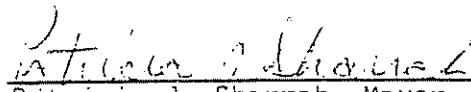
WHEREAS, Arizona law permits two or more public agencies to enter into contracts or agreements; and

WHEREAS, it is to the mutual advantage of the Town and the Department of Transportation to landscape certain areas within the State Route 177 right-of-way through the Town of Kearny;


NOW THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Kearny as follows:

1. The Town Council hereby approves that certain "Landscape Maintenance Agreement" between the Town of Kearny and the Arizona Department of Transportation, Highways Division.
2. Patricia J. Sharrah, Mayor, is hereby authorized to execute said Agreement on behalf of the Town Kearny.
3. The immediate operation of this Resolution is necessary for the preservation of the public peace, health, and safety and therefore an emergency is hereby declared to exist, and this Resolution shall be in full force and effect immediately after its passage and adoption.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Kearny, Arizona, this 17th day of MARCH, 1988.


Patricia J. Sharrah, Mayor

ATTEST:


Carol Meadows, CMC/A&E, Town Clerk


APPROVED AS TO FORM:


Stephen R. Cooper, Town Attorney

STATE OF ARIZONA)
 : SS
County of Pinal)

I, Carol Meadows, Town Clerk of
the Town of Kearny, Arizona, do hereby certify that the
following is a true and correct extract of the minutes of the
Town Council meeting held March 17, 1988.

In Witness Whereof, I have hereunto set my hand and
affixed the Official Seal of the Town of Kearny, Arizona. Done
in Kearny, Arizona this 29th day
of March, 1988.


Carol Meadows CMC/AAE, Town Clerk

STATE OF ARIZONA
County of Pinal
Town of Kearny

I, the undersigned, Carol Meadows, being the duly appointed and qualified Town Clerk of the Town of Kearny certify that the foregoing Resolution No. 88-259 is a true, correct and accurate copy of Resolution No. 88-259, passed and adopted at a regular council meeting of the Mayor and Common Council of the Town of Kearny, held on the 17th day of March, 1988 at which a quorum was present and voted in favor of said resolution.

Given under my hand and seal this 29th day of March, 1988.

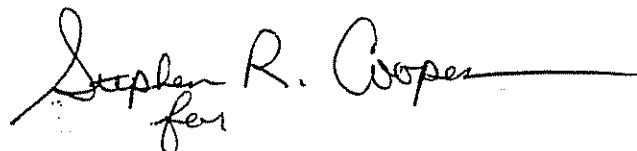


Carol Meadows CMC/AAE, Town Clerk

APPROVAL OF THE TOWN ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the TOWN OF KEARNY and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 16th day of March, 1988.

A handwritten signature in cursive script that reads "Stephen R. Cooper". The signature is written in dark ink and is positioned above the printed name of the signatory.

THOMAS MCCARVILLE

Town Attorney

APPROVAL OF THE ATTORNEY GENERAL

I HEREBY STATE THAT I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER AND THE TOWN OF KEARNY and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 2nd day of May, 1988.

ROBERT K. CORBIN
The Attorney General

Albert Meyer

Assistant Attorney General